

REMARKS

Claims 1-8, 10 and 12-14 are pending, of which claims 1, 10, 18, 21, 22, 23 and 24 are independent. Claims 1, 10, 18, 21, 22, 23 and 24 are amended. Support for the amendments can be found throughout the Specification and at least at page 6, lines 26-33. No new matter has been introduced. Applicants respectfully submit that the foregoing claims define over the cited references. Accordingly, Applicants respectfully request the Examiner to pass the application to allowance.

Rejection of Claims under 35 U.S.C. §102

Claims 1-8, 10 and 12-24 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pre-Grant Patent Publication No. 2004/0133523 to Inokuchi et al. (hereinafter “Inokuchi”) (Office Action, page 2, § 5). Applicants respectfully traverse the rejection with following remarks.

A. Claim 1

Applicants respectfully submit that Inokuchi does not disclose at least the following features of claim 1: *the protection program searching, from the optical medium, for a file on the optical medium prior to determining a media type of the optical medium, the file containing the software program.*

In the Advisory Action, the Examiner asserts that the Applicants suggest that because Inokuchi’s software program is already installed on the computer, it cannot reside on the optical medium. The Examiner contends that Inokuchi describes an installer program which contains a determining program and resides on a CD-ROM and thus Inokuchi suggest that the software program is installed from the optical media, at least once.

As correctly indicated by the Examiner, Inokuchi discusses a determining program that is installed on a computer. In Inokuchi, the determining program runs on a computer and determines whether or not the inserted disc is genuine by determining whether the disc is a reproduction-only disc, i.e. an original, or a writable disc, i.e. a copy. Thus, Inokuchi’s determining program makes the determination *from* the computer where it has been installed.

As such, in Inokuchi all computers that will use the disc should be equipped with the determining program to check for the originality of the disc.

In contrast, Applicants' amended claim 1 provides that the protection program searches *from the optical medium, for a file on the optical medium prior to determining a media type of the optical medium, the file containing the software program*. That is, the protection program that *resides on the optical medium with the software program* executes while it is still saved on the optical medium and searches for a file on the optical medium. As such, according to Applicants' claim 1, the protection program is portable along with the optical medium. The protection program may be used with any computer that tries to access the software program that resides on the optical medium.

In light of the foregoing remarks, Applicants respectfully submit that Inokuchi does not disclose *the protection program searching, from the optical medium, for a file on the optical medium prior to determining a media type of the optical medium, the file containing the software program*, as recited in Applicants' amended claim 1. In Inokuchi, the protection program, i.e. the determining program, runs on the computer and makes the determination from the computer ([0030] and Figure 1).

For the reasons set forth above, Applicants respectfully request that the 35 U.S.C. §102(e) of claim 1 be withdrawn.

B. Claims 2-8

Claims 2-8 depend from and incorporate all the features of claim 1. As such, claims 2-8 are allowable for at least the same reasons as set forth above for claim 1. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 2-8 under 35 U.S.C. § 102(e).

C. Claims 10 and 12-24

Independent claims 10, 18, 21-24 recite *searching, from the optical media for a file on the optical medium prior to determining a media type of the optical medium, the file containing the software program*.

In light of the remarks provided with respect to claim 1, Applicants respectfully submit that Inokuchi does not disclose each and every feature of claims 10, 18 and 21-24. Claims 12-17 depend from claim 10, and claims 19-20 depend from claim 18. Dependent claims incorporate each and every element of the independent claim upon which they depend. As such, claims 12-17 and 19-20 are allowable for at least the same reasons as set forth above for claims 10 and 18. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 10 and 12-24 under 35 U.S.C. § 102(e).

CONCLUSION

In light of the above amendments and arguments, Applicants respectfully submit that all of the pending claims are in condition for allowance. Should the Examiner feel that a teleconference would expedite the prosecution of this application, the Examiner is urged to contact the Applicants' attorney at (617) 227-7400.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080, under Order No. MWS-107RCE3. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: February 12, 2010

Respectfully submitted,

By: /Neslihan I. Doran/

Neslihan I. Doran

Registration No.: 64,883

LAHIVE & COCKFIELD, LLP

One Post Office Square

Boston, Massachusetts 02109-2127

(617) 227-7400

(617) 742-4214 (Fax)

Attorney/Agent For Applicant